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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/583,679	06/19/2006	Paola Giavedoni	F7758(V)	4495
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EXAMINER				
SMITH, CHAIM A				
ART UNIT		PAPER NUMBER		
1794				
NOTIFICATION DATE		DELIVERY MODE		
09/08/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

Office Action Summary**Application No.**

10/583,679

Applicant(s)

GIAVEDONI, PAOLA

Examiner

CHAIM SMITH

Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SF/DE)
Paper No(s)/Mail Date 08/16/2006, 08/31/2006
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: ____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 1 – 8 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seffert EP 0 396 810 in view of Heinrich USPN 2,641,548 and Orie JP 2000-023633 as evidenced by the Oxford English Dictionary.

4. Regarding claims 1 and 2, Seffert discloses a method of preserving edible vegetable matter wherein vegetable matter to be preserved is selected (garlic) (paragraph [0004]), said vegetable matter is immersed in a 130° C heated edible oil, after which the vegetable matter is packaged together with said oil such that said vegetable matter is immersed in the oil (paragraph [0011]). It is unclear from applicant's specification what the exact function of the heating step is. In any case, Heinrich

discloses it was well established in the art to heat plant/vegetable material in oil for short periods of time to blanch the product. This is presumably the effect to applicant's heating in oil as well, especially since applicant notes that microbial activity is destroyed and enzymatic activity is inactivated. Therefore the combination of Seffert and Heinrich fairly teach it would have been conventional to heat vegetables in oil for preservation, and at what point one stops the heating would have been an obvious function of the degree of textural change one desires

5. Seffert is silent with respect to the removal of the vegetable matter from the oil prior to packaging with said oil. Orii discloses the processing of vegetable matter (onion) in which said vegetable matter is immersed in oil that would have a temperature of 160° C – 200° C and for a time period between 5 seconds and 4 minutes (60 seconds), after which the oil is drained prior to further processing. Orii further discloses this immersion and draining process prevents the generation of an astringent taste in the vegetable matter (paragraph [0008]) and therefore one of ordinary skill would have done so to prevent an astringent taste in preserved vegetable matter. Also the longer one had the hot oil in contact with the product, the more cooking would occur, so that the contact time between hot oil and product would have been an obvious result effect variable.

6. Regarding claim 3, the vegetable matter selected by Seffert is fresh (whole or comminuted) (paragraph [0005] and [0006]).

7. Regarding claims 4 and 5, Seffert in view of Heinrich and Orii discloses the vegetable matter to be garlic ('810), onions ('633), and Herbs de Provence ('810;

paragraph [0007]) which is known to contain a mixture of spices such as basil, fennel, and thyme.

8. Regarding claim 6, Seffert discloses that the duration and temperature of heating are chosen such that the appearance of the vegetable matter is not adversely affected ('810' paragraph [0005]).

9. Regarding claim 7, Seffert discloses that after heating the vegetable matter is covered by olive oil ('810; paragraph [0010]).

10. Regarding claim 8, Seffert discloses after heating the vegetable matter is stored in a tightly closed package ('810; paragraph [0011]). Seffert is silent with respect to the transparency of said package. Whether or not the package is transparent is seen to be an obvious design choice which is well within the level of ordinary skill in the art. Further, matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art (see *In re Seid*, 161 F.2d, 73 USPQ 431 (CCPA 1947)).

11. Regarding claim 10, as defined by the Oxford English Dictionary soffritto is known to be comprised of the ingredients disclosed by Seffert in view of Orii such as 810), onions ('633), and herbs ('810; paragraph [0007]).

12. Claims 9, 11, and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seffert EP 0 396 810 in view of Orii JP 2000-023633 further in view of Simpson et al. USPA 2001/0001674.

13. Seffert in view of Orii is relied upon with respect to the rejection of claim 1 as set forth above. In regard to claim 9, it is first noted that "for use in a meal kit" is intended

use and not a positive recitation of a meal kit. In any case, the vegetable matter of the combination of references would be capable of being used in a meal kit. Regarding claims 9 and 12 although Seffert in view of Orii does not disclose the use of a meal kit, Simpson discloses a meal kit (title) designed to contain food items which would be selected and apportioned for use therein. Simpson further discloses that in a convenience oriented world consumers strongly desire shelf stable meal kits which taste like homemade food ('674; paragraph [0004]) making it obvious to one of ordinary skill in the art to include the preserved vegetable matter of Seffert in view of Orii in the meal kit disclosed by Simpson in order to meet consumer demand for easy to prepare meals with a fresh taste.

14. Regarding claim 11, Seffert in view of Orii further in view of Simpson discloses the use of flexible packaging to contain the preserved vegetable matter (sauce) ('674; paragraph [0038]). Regarding the transparency of said packaging Simpson discloses that the film covering the meal kit is transparent to allow the consumer to view the enclosed items ('674; paragraph [0033]) and for that reason it would be obvious that the flexible package containing the preserved vegetable matter would be transparent as well. Further whether or not the package is transparent is seen to be an obvious design choice which is well within the level of ordinary skill in the art. Matters relating to ornamentation only which have no mechanical function cannot be relied upon to patently distinguish the claimed invention from the prior art (see *In re Seid*, 161 F.2d, 73 USPQ 431 (CCPA 1947)).

Conclusion

15. FR 2,628,943 was not considered on the IDS of 16 August 2006 as it was already considered on the IDS submitted 31 August 2006.

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tanabe et al. USPA 2002/0039614 discloses a method for making a soffrito (sofrit) in which olive oil is used in conjunction with a rotary fryer which is heated to 200° C.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to CHAIM SMITH whose telephone number is (571)270-7369. The examiner can normally be reached on Monday-Thursday 7:30-5:00.

18. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

19. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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/C. S./
Chaim Smith
Examiner, Art Unit 1794
23 August 2009

/Steve Weinstein/
Primary Examiner, Art Unit 1794